

the restrictions upon assessment under section 6213.

(b) As used in this section and §§ 301.6871(a)-2 to 301.6873-1, inclusive, the term "proceeding under the Bankruptcy Act" includes a proceeding under chapters I to VII, inclusive, of the Bankruptcy Act, or under section 75 or 77 (11 U.S.C. 203, 205), or chapters X to XIII, inclusive, of such Act, or any other proceeding under the Act.

§ 301.6871(a)-2 Collection of assessed taxes in bankruptcy and receivership proceedings.

(a) During a proceeding under the Bankruptcy Act (11 U.S.C. chapters 1-14) or a receivership proceeding in either a Federal or State court, generally the assets of the taxpayer are under the control of the court in which such proceeding is pending, and the collection of taxes cannot be made by levying upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to levy. See paragraph (b) of this section and § 301.6871(b)-1 with respect to claims for such taxes. See section 6873 with respect to collection of unpaid claims.

(b) District directors should, promptly after ascertaining the existence of any outstanding liability against a taxpayer in any proceeding under the Bankruptcy Act or in any receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, or by the appropriate orders of the court in which such proceeding is pending, file proof of claim covering such liability in the court in which such proceeding is pending. Such proof of claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the instructions of the Commissioner direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. At the same time proof of claim is filed with the bankruptcy or receivership court, the district director will send notice and demand for payment to the taxpayer, together with a copy of such proof of claim.

(c) Under sections 3466 and 3467 of the Revised Statutes (31 U.S.C. 191, 192) and section 64 of the Bankruptcy Act (11

U.S.C. 104), taxes are entitled to the priority over other claims therein specified, and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the proceeding under the Bankruptcy Act or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Sections 75(l), 77(e), 199, 337(2), 455, and 659(6) of the Bankruptcy Act (11 U.S.C. 203(l), 205(e), 599, 737(2), 855, and 1059(6)) also contain provisions with respect to the rights of the United States relative to priority of payment. For the filing of returns by a trustee in bankruptcy or by a receiver, see section 6012(b)(3) and 28 U.S.C. 960. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all disputes regarding the amount and validity of taxes claimed in a proceeding under the Bankruptcy Act. A proceeding under the Bankruptcy Act or a receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act. However, the claim may be settled or compromised as in other cases in court.

(d) For the requirement that a receiver, trustee in bankruptcy, or other like fiduciary give notice as to his qualification as such, see section 6036 and the regulations thereunder.

§ 301.6871(b)-1 Claims for income, estate, and gift taxes in proceedings under the Bankruptcy Act and receivership proceedings; claim filed despite pendency of Tax Court proceedings.

(a) If it is determined that a deficiency is due in respect of income, estate, or gift tax and the taxpayer has filed a petition with the Tax Court before (1) the adjudication of bankruptcy in any liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act, 11 U.S.C. chapters 1-14) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver, the trustee,

receiver, debtor in possession, or other like fiduciary, may, upon his own motion, be made a party to the Tax Court proceeding and thereafter may prosecute the appeal before the Tax Court as to that particular determination. No petition shall be filed with the Tax Court for a redetermination of the deficiency after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver.

(b) Even though the determination of a deficiency is pending before the Tax Court for redetermination, proof of claim for the amount of such deficiency may be filed with the court in which the proceeding under the Bankruptcy Act or receivership proceeding is pending without awaiting final decision of the Tax Court. In case of a final decision of the Tax Court before the payment or the disallowance of the claim in the proceeding under the Bankruptcy Act or receivership proceeding, a copy of the Tax Court's decision may be filed by the district director with the court in which such proceeding is pending.

(c) While a district director is required by section 6871(a) and paragraph (a) of § 301.6871(a)-1 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 6861, and consequently the provisions of that section do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided in section 6861(b) will not be mailed. Although such notice will not be issued, a letter will be sent to the taxpayer or to the trustee, receiver, debtor in possession, or other like fiduciary, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a conference by the district director with respect to such deficiency. However, such letter will not provide for such a conference where a petition was filed with the Tax Court before (1) the adjudication of bankruptcy in a liquidating pro-

ceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act), the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver.

§ 301.6872-1 Suspension of running of period of limitations on assessment.

If any fiduciary in any proceeding under the Bankruptcy Act (11 U.S.C. chapters 1-14), including a trustee, receiver, or debtor in possession, or a receiver in any other court proceeding is required, pursuant to section 6036, to give notice in writing to the district director of his qualification as such, then the running of the period of limitations on assessment shall be suspended from the date the proceeding is instituted to the date such notice is received by the district director, and for an additional 30 days thereafter. However, the suspension under this section of the running of the period of limitation on assessment shall in no case exceed 2 years.

§ 301.6873-1 Unpaid claims in bankruptcy or receivership proceedings.

(a) If any portion of the claim allowed by the court in a receivership proceeding, or in any proceeding under the Bankruptcy Act (11 U.S.C. chs. 1-14) remains unpaid after the termination of such proceeding, the district director will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 6601 may be collected from the taxpayer by levy or proceeding in court within the period of limitation for collection after assessment. For the general rule as to such period of limitation, see section 6502, and for suspension of the running of the period provided in section 6502, see, for example, section 6503. For suspensions under other provisions of law, see, for example, section 11f of the Bankruptcy Act (11 U.S.C. 29(f)). Extension of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in section 6161(c).